Filed 5/9/19 In re N.M. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re N.M., a Person Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.O., Defendant and Appellant.	B287297 Los Angeles County Super. Ct. No. DK06389D

APPEAL from an order of the Superior Court of Los Angeles County, Michael E. Whitaker, Judge. Affirmed.

Law Office of Karen B. Stalter and Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Timothy M. O'Crowley, Principal Deputy County Counsel, for Plaintiff and Respondent.

Father appeals from a disposition order under Welfare and Institutions Code section 361 removing his infant daughter N.M. from his custody.[1] He contends the evidence does not support the juvenile court's finding that the Los Angeles County Department of Children and Family Services (the Department) made "reasonable efforts" to prevent N.M.'s removal and that there were no "reasonable means" to protect the infant other than removing her from his custody. We affirm.[2]

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's ruling, drawing

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[1] Statutory references are to the Welfare and Institutions Code.

[2] Father also challenges a sustained allegation in a section 342 petition, finding N.M. to be a child described in section 300, subdivision (b) based on father's violation of a court ordered plan for the infant's care. Because the court had already declared N.M. a dependent child based on the failure of N.M.'s mother to protect the infant from domestic violence, and father submitted to the court's jurisdiction upon the declaration of dependency, his objection to the additional sustained allegation does not present a justiciable issue for which this court could render effective relief. (See *In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498 [a case is moot when it is " 'impossible for the appellate court to grant the appellant effective relief' "]; *Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503 ["A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief."].) We therefore have no cause to address father's moot contention in this appeal. We note, however, that the evidence supporting the disposition order also supports the finding of neglect.

all reasonable inferences in support of the court's findings. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.)

N.M. was born in January 2017. Her mother has three older children by another father. Father and mother had been dating for about a year before mother became pregnant with N.M. They are not married.

The family came to the Department's attention in December 2016, a month before N.M.'s birth, when police responded to a domestic violence incident between mother and the father of mother's three older children. An investigation uncovered that the parents had a history of domestic violence dating back several years, largely attributable to the father's alcohol abuse. After N.M.'s birth, the Department filed a dependency petition alleging, among other things, that mother had failed to protect N.M. and her other children from the danger posed by the father's alcohol abuse and domestic violence.

On June 22, 2017, the juvenile court held a combined jurisdiction and disposition hearing on the original petition against mother and the father of her three older children.[3] Mother pled no contest to the failure to protect counts, and the court declared N.M. and her siblings dependent children under section 300, subdivision (b). Father submitted to the juvenile court's jurisdiction and was deemed a nonoffending party.

As for disposition, the court removed N.M. from mother's custody and released her to father's custody. Before the hearing, however, father had told the Department that he was unable to

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[3] The older children's father had fled the scene after the most recent domestic violence incident and his whereabouts were unknown at the time of the hearing.

care for N.M. due to his long work hours, and he asked that the infant remain in the home of her maternal aunt, with whom N.M. had been living since her detention from mother's custody. Based on this request and representation, the court placed N.M. with father under a home-of-parent order, and ordered father to make an appropriate plan for N.M. to stay with her maternal aunt.

On July 5, 2017, a social worker met with father to discuss his plan for complying with the court's order. Father said he had no plans other than to leave N.M. with the maternal aunt and to pick her up when he could to spend time with the infant. He told the social worker that he lived in a studio apartment with his aunt, uncle, and brother, and that he did not have space for the baby or for a crib. He said he would provide contact information for his relatives so the Department could evaluate his support system, but he also reported that his aunt and uncle worked full time and would not be able to care for the baby while he was at work. The social worker reminded father that the court had ordered him to make a plan with the maternal aunt for N.M.'s care. He said he would speak to the maternal aunt.

Later that month the maternal aunt informed the Department that father had agreed to the following plan: Father would pay maternal aunt $100 a week for "babysitting fees," and he would purchase diapers, wipes, clothing, and baby food as needed. He also would have scheduled unmonitored visits with N.M. on Wednesdays and Sundays.

On August 16, 2017, the social worker met with father at his studio apartment. The social worker observed a set of bunk beds and a queen size bed occupied much of the floor space and there was no room for a crib or playpen. Father said his aunt and uncle shared the bed, while he and his brother shared the top

bunk, and his cousin slept in the bottom bunk. The social worker also noticed coins and other small objects on the floor, extension cords and other cables on the floors and shelves, and a large puddle of water in the kitchen. Father told the social worker he no longer had a regular work schedule, but he had been waiting at Home Depot every day to be hired for day laborer work.

On August 21, 2017, the maternal aunt informed the Department that father had not paid her for two weeks and had not supplied diapers or wipes as required under the plan. She said "father is not responsible, he thinks this is a game," adding that when father "picks up [N.M.] he is always on the phone and not paying attention to her." She expressed frustration that father never arrived at the agreed upon time for visits and worried that father had not shown the ability to adequately care for the infant for an extended period of time.

Father confirmed he had an argument with the maternal aunt and asked the social worker if he could pick up N.M. and have the infant reside with him. After consulting with county counsel, the social worker informed father this was not an option because the home-of-parent order was made with the condition that N.M. remain in the maternal aunt's care under an appropriate plan. The social worker told father that if the plan was "no longer appropriate or an option," the Department would request a removal order as to father. Father agreed to have N.M. remain in the maternal aunt's care until a decision on custody was made.

The maternal aunt said she was willing to keep N.M. if the court detained the child from father's custody. She confirmed she would work with father on visitation, but said "he is just not ready to care for [N.M.] full time." This was consistent with the

social worker's observations that father struggled to properly hold the baby while supporting her head, that he seemed unaware of the infant's dietary needs, and that he needed assistance changing her diaper.

On August 31, 2017, the Department filed a subsequent dependency petition under section 342, alleging father neglected N.M. by failing to comply with the order to make an appropriate plan for N.M. to stay with her maternal aunt.

At the hearing later that day, father's counsel objected to N.M. being "detained" from father. Counsel acknowledged the home-of-parent order was conditioned upon N.M. remaining in her maternal aunt's physical custody, with an appropriate plan in place, but argued father had fulfilled his obligation by paying the maternal aunt $100 per week.

The child's counsel disputed the claim that father had consistently made the weekly payments, and noted that father had also failed to provide his baby with her essential supplies. Counsel stressed that the Department had evaluated father's home and determined it was not suitable for an infant due to its limited accommodations and hazardous conditions. Finally, counsel noted that father had admitted he could not take care of N.M. because he worked full-time. The Department joined with child's counsel in arguing N.M. should be detained in protective custody pending a hearing on the section 342 petition.

The juvenile court found a prima facie case for detention under section 319, granted father unmonitored visitation with N.M. pending a hearing on disposition, and ordered a parenting class referral for father.

The Department filed a report in advance of the disposition hearing detailing its investigation and efforts to assist the family.

A social worker conducted a risk assessment and found the "risk level to be high" for neglect if N.M. remained in father's care. The assessment noted the cramped and hazardous conditions of father's studio apartment, and emphasized that the relatives with whom father lived would not make themselves available for interviews, nor had they confirmed whether they would agree to allow the infant to reside in the apartment. The Department reported that father had failed to provide financial assistance to the maternal aunt for N.M.'s care, despite his agreement to do so under the court ordered plan, and that the maternal aunt had been forced to obtain a credit card to pay for the infant's necessities.

As for its efforts to assist the family, the Department reported that it had provided father with referrals to community resources and that it continued to oversee the case and provide case management services. It noted that N.M. had never lived with father and that father had admitted he could not provide financial assistance due to his current unemployment. Father had also failed to show for a scheduled appointment with the social worker to discuss safety issues and a plan for N.M. The maternal aunt had completed 12 hours of foster care and CPR training, and she was currently under evaluation for home approval and funding assistance for N.M.

On October 18, 2017, the court held a combined hearing on the section 342 petition and disposition. The Department argued the petition should be sustained because father had failed to comply with the court ordered plan to financially support N.M. in the maternal aunt's custody. Counsel added that, due to the home-of-parent order, the maternal aunt currently was not eligible for financial assistance. The child's counsel joined with

the Department, arguing that father had neglected N.M. by failing to provide for her and that he had been avoiding contact with the maternal aunt when she asked for help with the baby's needs.

Father's counsel asked for the petition to be dismissed, arguing father's inability to financially support his child was not grounds for a neglect finding. Counsel suggested the Department should provide father with financial assistance so he could support the child, but did not indicate father would be willing or able to care for N.M. on a daily basis.

The juvenile court sustained the petition and asked for argument on disposition. Father's counsel argued N.M. should not be removed from father's custody because the child could continue to reside with the maternal aunt so long as the Department provided father with financial assistance to support the infant.

The court rejected the proposal and ordered N.M. removed from father's custody so she could be suitably placed with the maternal aunt under the Department's proposed case plan. The court ordered family reunification services, including parenting classes for father, and granted father unmonitored visitation. This appeal followed.

DISCUSSION

Father contends the evidence was insufficient to support the juvenile court's finding under section 319 that the Department made reasonable efforts to avoid the need for detention in advance of the disposition hearing. He also argues the evidence was insufficient to support the disposition order because reasonable means existed to protect N.M. in his custody. Neither contention has merit.

1. *Substantial Evidence Supports the Detention*

In the dependency context, the word "removal" is often used to describe the physical taking of a child from parental custody under a protective custody warrant. In actuality, a dependency "removal" involves law enforcement and the child welfare agency taking temporary custody of the child because the agency has determined the child's circumstances may bring the child within the juvenile court's jurisdiction under section 300. (§ 305.) If the agency removes the child under such circumstances, it must file a dependency petition within 48 hours, excluding nonjudicial days, or release the child to parental custody. (§ 313, subd. (a).) If the agency files a petition, the juvenile court must conduct a detention hearing no later than the next judicial day following the petition's filing. (§ 315.)

At the detention hearing, the juvenile court determines whether the child welfare agency has made a prima facie showing that there is a need for continued detention. (§ 319, subd. (c).) Section 319 governs the detention hearing and requires the juvenile court to determine whether "reasonable efforts" were made to prevent or eliminate the need for physical removal of the child from the home and whether there were "reasonable means" other than removal to protect the child. (§ 319, subds. (c)(1) & (f)(1).) If the court determines that continued out-of-home custody is warranted, the court orders the child "detained." (§ 319, subd. (g).)

"A reasonable efforts finding must be made based on the particular circumstances of a case." (*In re Amy M.* (1991) 232 Cal.App.3d 849, 856.) The efforts, like reasonable services, need only be reasonable under the circumstances—not perfect.

(Cf. *In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We review the court's finding for substantial evidence. (*Id.* at p. 545.)

Here, the evidence showed that after declaring N.M. a dependent child based on mother's failure to protect the infant from the threat of domestic violence in her home, the court entered a home-of-parent order placing N.M. with father on the condition that he would establish an appropriate plan for the infant to remain in the home of her maternal aunt. The court made this order essentially at father's request, based on his admission that he was unable to care for the infant due to his long work hours. Father then agreed with the maternal aunt that he would pay her $100 a week and provide essential supplies for his baby as needed. The social worker, as part of the Department's efforts to assist the family and manage the case, met with father to assess his support system and ability to care for the infant. The meeting effectively confirmed what father had admitted: that he did not have the capacity to care for the infant if she were placed in his physical custody. Despite having agreed to the conditions for placement with the aunt, father failed to fulfill his obligations, forcing the Department to file the section 342 petition.

In arguing that the juvenile court should not have detained N.M. in protective custody, father seemingly forgets that the infant was placed in the maternal aunt's physical custody *at his request* under conditions that *he agreed to* with the aunt and the Department. In other words, efforts that he presumably felt were reasonable at the time had already been made to prevent the detention, but he failed to live up to his end of the agreement. Indeed, when the social worker told father that detention would be required if the plan was "no longer appropriate or an option,"

father conceded N.M. should remain in the maternal aunt's care until a decision on custody could be made. Under these circumstances and on this record, there was ample evidence to support the court's decision to detain N.M. from father's physical custody in advance of the disposition hearing.

2. *Substantial Evidence Supports the Disposition Order*

Section 361, subdivision (c)(1), authorizes the juvenile court to remove a dependent child from his or her custodial parent where the court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." " 'Removal on any ground not involving parental rejection, abandonment, or institutionalization requires a finding that there are no reasonable means of protecting the child without depriving the parent of custody.' " (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1013, fn. 3; § 361, subds. (c)(1) & (d).)

For a court to remove a dependent child, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re T.V.* (2013) 217 Cal.App.4th 126, 135-136; see *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) In deciding whether to remove a child, "the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.*, at p. 917; see *In re D.C.* (2015) 243 Cal.App.4th 41, 55; *In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) " 'A removal order is proper if it is

based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.' " (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 83; see *In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) Although the standard of proof for the juvenile court's findings is clear and convincing evidence, we review the removal order for substantial evidence supporting the court's findings. (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1493 [" '[t]he "clear and convincing" standard is for the edification and guidance of the juvenile court. It is not a standard for appellate review. [Citation.] " 'The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.' " ' "].)

In determining whether "reasonable means to protect the minor" exist without removal from a parent's physical custody, section 361, subdivision (c)(1) directs the court to consider: "(A) The option of removing an offending parent . . . from the home[; and] [¶] (B) Allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." The first of these plainly was not an option because the juvenile court had already determined placing N.M. with mother would endanger the child.[4]

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[4] Father relies upon *In re Ashly F.* (2014) 225 Cal.App.4th 803 to argue the juvenile court failed to consider reasonable means short of removal; however, the case is inapposite for the reason noted above. In reversing the disposition order, the

As for the second, father had already been given the benefit of formulating a reasonable plan to retain custody of N.M. while she remained in the maternal aunt's home. Father violated the plan and the court's home-of-parent order.

Father nevertheless argues there were "numerous actions" the Department could have taken to assist him in maintaining custody of N.M. Acknowledging the unsafe conditions of his studio apartment, which included puddles of water, exposed cables, and small objects such as coins on the floor, father argues the Department "could have provided in-home housekeeping services under family maintenance or family preservation." The argument is without merit. Not only must the alternative measures be reasonable, but they also must be plausibly effective to protect the child should she remain in parental custody. If a parent is unable to keep a reasonably safe home environment without the assistance of a housekeeper, it is fair to assume he also would be unable to meet the unrelenting needs and demands of a six-month-old infant in his home. Housing referrals likewise would have been inadequate to address father's apparent inability to meet N.M.'s daily needs if she were placed in his physical custody.

Ashly F. court concluded the undisputed evidence contradicted the juvenile court's finding because "the court was required to 'consider, as a reasonable means to protect the minor, the option of removing an offending parent . . . from the home,' " and "[n]othing in the record shows that the court considered this option even though *the evidence showed that it was available.*" (*Id.* at p. 810, italics added.) Here, removing father from the home and leaving N.M. with mother as section 361, subdivision (c)(1)(A) contemplates was not an option given mother's endangering conduct and failure to protect her children.

Father maintains his lack of parenting skills could have been addressed by providing him financial assistance, parent education classes, and childcare referrals. The argument again ignores the history of this case and father's failure to meet the obligations *he agreed to* when he asked to have N.M. placed in the maternal aunt's home. As discussed, the focus of the dependency statutes "is on averting harm to the child" (*In re T.V., supra,* 217 Cal.App.4th at pp. 135-136), and a removal order is proper if it is based on proof of " 'parental inability to provide proper care for the minor' " and " 'potential detriment to the minor if he or she remains with the parent' " (*In re Francisco D., supra,* 230 Cal.App.4th at p. 83). Given father's demonstrated inability to meet the most basic responsibilities of caring for his six-month-old baby while she stayed in the physical custody of her maternal aunt, it was not unreasonable for the juvenile court to conclude that placing the infant in father's custody—even with daytime childcare in place—would pose a serious potential danger to N.M.'s physical health and safety.

DISPOSITION

The disposition order is affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.